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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RAYMOND CHARLES RANDOLPH,

Defendant and Appellant.

B294044

(Los Angeles County
Super. Ct. No. S018185)

THE COURT:

Appellant Raymond Charles Randolph appeals from the September 11, 2018 order in which the superior court granted in part and denied in part his petition to seal and destroy his arrest record. His appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), raising no issues. After appellant was notified of his counsel's brief, he filed his own brief, asserting that although the arrest record has been sealed, it has not been destroyed. We have reviewed the entire record,

including the points made in appellant's brief. Finding no arguable issues, we affirm the judgment.

On June 21, 1989, appellant was arrested and booked on a charge of spousal rape, in violation of Penal Code section 262, subdivision (a).¹ Two days later, the charges were dismissed and appellant was released. In March 2018, appellant filed a petition pursuant to section 851.8 to seal the arrest record, and on June 8, 2018, the trial court denied the petition without prejudice, ruling that appellant had not submitted any information to sustain his burden to prove there was no probable cause to arrest him.²

On August 16, 2018, appellant filed a petition to seal and destroy the arrest record, this time pursuant to sections 851.8 and 851.91.³ The petition included evidence of good cause for granting the petition under section 851.91, but no evidence of factual innocence, as required by section 851.8. Appellant waived his appearance at the hearing on the petition, and the People did not oppose the sealing of the arrest record. Attached to

¹ All further statutory references are to the Penal Code unless indicated otherwise.

² A petitioner filing under section 851.8 bears the burden to demonstrate factual innocence, that is, that “no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made.” (§ 851.8, subd. (b).)

³ Section 851.91 permits the court to seal a record of arrest which did not result in conviction upon a showing that the interests of justice would be served, based upon relevant factors such as hardship to the petitioner caused by the arrest, evidence of the petitioner's good character, evidence about the arrest, and the petitioner's record of convictions. (§ 851.91, subd. (c)(2)(B).)

appellant's petition was a letter from the Los Angeles County Sheriff stating that records dating prior to 1992 had been purged from the system and were no longer available. The trial court found that the sheriff's department had no record of the arrest upon which to base opposition. On September 11, 2018, after reading and considering the petition, the superior court denied relief under section 851.8, granted relief under section 851.91, and issued an order to seal the record.⁴ Appellant filed a timely notice of appeal from the order.

We have examined the entire record and are satisfied that appellate counsel has fully complied with her responsibilities and that no arguable issue exists. We conclude that appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the superior court's order to seal the arrest record of June 21, 1989. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 123-124.)

The judgment is affirmed.

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LUI, P.J.

CHAVEZ, J.

HOFFSTADT, J.

⁴ Unlike section 851.8, section 851.91 contains no provision for the *destruction* of arrest records.